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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-098-18279

Office: NATIONAL BENEFITS CENTER

Date: **MAY 23 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts her claim of eligibility for temporary resident status and submits evidence.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 6, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed her first address in the United States as [REDACTED], Newark, New Jersey, from 1981 to 2004. Similarly, at part #33, she listed her first employment in the United States to be self-employment in maintenance from 1981 to 2004.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following evidence:

- Copies of two letters written in Spanish from UH-S.A.V.E., in Newark, New Jersey, one dated August 9, 2005, and the other dated July 27, 2005;
- A copy of a letter from the Center for Breast Imaging, in Newark, New Jersey, and dated August 1, 2005;
- A copy of a bank statement from Crown Bank dated February 15, 2006;
- A copy of a letter from the Internal Revenue Service dated June 6, 2005;
- A copy of a bill from the Internal Revenue Service dated July 4, 2005;
- A copy of a Bank of America statement dated November 15, 2005;
- A copy of a Sprint bill dated December 12, 2005; and,
- A copy of a Dish Network bill dated February 8, 2006.

While the documents demonstrate the applicant's presence in the United States in 2005 and at the beginning of 2006, they are insufficient to demonstrate her continuous unlawful residence in the country during the requisite period.

In denying the application the director noted that the evidence submitted by the applicant was not sufficient to meet her burden of proof and that she was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status and resubmits the evidence she submitted in response to the director's Notice of Intent to Deny. She also submits the following attestations:

- An affidavit from [REDACTED] in which she stated that she met the applicant in 1980 and rented a room to her in 1981 and that the applicant has been her friend for a number of years. Here the applicant fails to specify the address where she rented the room to the applicant and the dates for which she rented the room. The affiant has failed to submit corroborating evidence, such as a lease agreement, rent receipts, or cancelled checks, to substantiate her claim. There is nothing in the record to demonstrate that the affiant herself was in the United States throughout the requisite period. The affiant's statement is insufficient to support the applicant's claim of continuous residence in the United States since before January 1, 1982. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] in which he stated that the applicant worked at his friend's house and that he has known her since 1986, when he first came to the United States. The affiant's statement is insufficient to support the applicant's claim of continuous residence in the United States since before January 1, 1982. Because the affiant cannot attest to the applicant's presence in the United States before 1986, his statement can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982. The attestations submitted by the applicant were lacking in specificity and were not accompanied by corroborative evidence. In addition, the evidence submitted by the applicant is dated subsequent to the requisite period, and therefore, is irrelevant to her claim of eligibility for temporary resident status.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R.

§ 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.